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IN THE

# Supreme Court of the United States

**OCTOBER TERM, A. D. 1936.**

**No. 247**

EDWARD T. BLAIR,
*Petitioner,*

*vs.*

GUY T. HELVERING, Commissioner of Internal Revenue,
*Respondent.*

## MOTION AND BRIEF OF *AMICUS CURIAE.*

EDWARD N. PERKINS,
*Amicus Curiae.*

IN THE

# SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1936.

**No. 247**

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*Petitioner,*

*vs.*

GUY T. HELVERING, Commissioner of Internal Revenue,
*Respondent.*

## MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE.*

Now comes Edward N. Perkins of 15 Broad Street, New York City, and moves this Honourable Court for leave to file the annexed brief as *amicus curiae,* the consent of counsel for the petitioners and that of counsel for the respondent having been first obtained. The undersigned asks this leave as counsel for a party whose rights respecting a still existent state of facts presenting the same questions here now presented have been adjudicated as between the Commissioner of Internal Revenue and himself in a manner inconsistent with the adjudication here under review, wherefore said party has substantial interest in the outcome in the present cause. Your petitioner as counsel presented the cause referred to before the United States Board of Tax Appeals and before the Circuit Court of Appeals for the Second Circuit and now seeks opportunity to endeavour to corroborate the rights thereby established.

EDWARD N. PERKINS,
15 Broad Street,
New York, N. Y.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

## BRIEF OF *AMICUS CURIAE.*

### Facts.

Fully adequate statement of the facts upon this particular record is supplied by the petitioner's brief. We confine ourselves to the statement in general terms of the point up for decision, as follows:

> Edward Tyler Blair, the petitioner, a *cestui que trust,* assigned voluntarily "an interest amounting "to * * * $9000. in each calendar year * * * in the "net income" of the trust thereafter to accrue. The Appellate Court of Illinois held, and pursuant thereto the Superior Court of Cook County (Illinois) decreed, binding all parties in interest, that the *cestui's* interest was assignable and that Edward Tyler Blair validly assigned a "part of his interest "in said trust estate" (R. page 90). Those courts were courts of competent jurisdiction. The question

here is, whether the $9000. yearly paid to the assignee are nevertheless taxable income *to the assignor*.

We observe that the Illinois Court's decree referred to is two-fold: *First*, it holds that the interest concerned was assignable (R. page 90); and, *secondly*, it holds that the assignment was a valid assignment of a part of the assignor's interest in the trust estate (R. page 90), so that the assignor was thereby excluded from the income assigned which the assignee became entitled to have directly from the trustees and in his own right.

## SUMMARY OF ARGUMENT.

### I.

The state courts of Illinois having jurisdiction have determined the petitioner's rights, namely, in effect, that the petitioner has validly assigned a part of his interest in the trust estate productive of the income concerned (Petitioner's Exhibit 17, R. pages 88-91). That determination is conclusive upon the respondent in the present case (*Freuler* v. *Helvering*, 291 U. S. 35; *Uterhart* v. *United States*, 240 U. S. 598) because a taxpayer whose rights have been adjudged conclusively as to him by a state court of competent jurisdiction can have no other rights than those so adjudged.

### II.

The legal effect of the adjudication of the Illinois Court, to wit, that the petitioner has parted with the property or right productive of the income concerned, is that the assignee became the owner of that interest or right and therefore the only person to whom the income derived from it can be taxed, since income cannot be taxed to one who

has no right or relation to it. The thing assigned was an interest in a beneficial estate, being not the money received before or after any given time as income, but the legal unit of right with which the right to the income goes, which is a property right carrying a title or present right to the future income from the moment of the assignment. (*United States* v. *Fidelity Trust Co.*, 222 U. S. 158; *Maguire* v. *Trefry*, 253 U. S. 12; *Matter of Stanfield*, 135 N. Y. 292). And this is so whether or not the thing assigned be deemed an equitable estate or a chose in action (*Senior* v. *Braden*, 295 U. S. 422; See 17 Col. L. Rev., p. 475).

## III.

The court below has erred in holding the income concerned taxable to the petitioner, because what was assigned was a property right or presently existing chose in action, as stated above. Consequently the income concerned belonged to the owner of the right and had nothing to do with the assignor who had parted with the right, and this is the holding of the Circuit Court of Appeals for the Second Circuit in *Commissioner* v. *Field* (42 Fed. [2d] 820), where the distinction is shown between this case and a case like *Lucas* v. *Earl* (281 U. S. 111).

## IV.

The distinction between a case like the present and such a case as *Lucas* v. *Earl* is perfectly clear. The basic difference between the case of an anticipatory attempt to deflect future income, which is *Lucas* v. *Earl*, and a case where a present existing property interest or right passes presently, may be illustrated by comparing *Rosenwald* v. *Commissioner* (33 Fed. [2d] 423), with the present case. *Lucas* v. *Earl* was a case of an anticipatory attempt to deflect income, as this court recognizes in *Poe* v. *Seaborn* (282 U. S.

101), saying, at page 117, that the attempted assignment relied upon in *Lucas* v. *Earl* was bottomed on the fact that the income concerned, which was earnings, would be the husband's property in order that the supposed assignment might be effective; that otherwise the assignment would have had nothing to operate upon. Here, the existing beneficial interest in the trust estate is what the assignment operated upon, whether it be regarded as an estate or interest in property, or as a complex of choses in action.

## ARGUMENT.

### I.

**The decree above referred to of the Illinois Court concludes the parties to it, of whom the petitioner was one, and therefore concludes the government here since its rights depend on the taxpayer's rights.**

This seems not only self-evident, but settled by *Freuler* v. *Helvering* (291 U. S. 35), and *Uterhart* v. *United States* (240 U. S. 598). In the *Uterhart* case this court said, as to the effect on Government's rights when taxing, of a state court's determination of the taxpayer's rights:

> "It is very properly admitted by the Government that the New York decree is in this proceeding binding with respect to the meaning and effect of the will. The right to succeed to the property of the decedent depends upon and is regulated by state law (178 U. S. 41, 57) and it is obvious that a judicial construction of a will by a state court of competent jurisdiction determines not only legally but practically the extent and character of the interests taken by the legatees."

We observe that similarly a decree of a state court of competent jurisdiction binding upon assignor and assignee as well as trustees, as to the effect of an assignment affecting trust income, determines not only legally but practically

the extent and character of the interests taken by the assignee.

In *Freuler* v. *Helvering* (*supra*) section 219 (d) of the 1921 Act made the "order", if any, governing distribution, controlling. There was a decree of the California court directing the trustees to retain certain amounts against capital depreciation and the controversy related to those amounts. The argument then centered on whether that decree was the order controlling distribution within section 219 (d). This court held that it was. And the reason is, that that decree did, in fact, control the distribution concerned. Accordingly this court (at page 44 of the 291st U. S.) said:

> "* * *. But, if the order of the state court does *in fact* govern the distribution, it is difficult to see why * * * it should not be effective to fix the amount of the taxable income of the beneficiaries. * * *." (Italics ours.)

The decree of the Illinois Court stands as the law of this case so far as concerns the effect of the assignment. We apprehend that this court will regard itself as constrained to hold that on this head the decision of the Appellate Court of Illinois is conclusive.

## II.

**The effect of the decree of the Superior Court for Cook County entered pursuant to the decision of the Appellate Court of Illinois, is that the assignee is the owner of an estate or interest productive of the income concerned.**

This decree of the Superior Court for Cook County is that the assignment was an assignment of "a part of the "interest of said Edward Tyler Blair [the assignor] in "said trust estate" (R. page 90), and was valid (*ibid.*); that the assignor's interest was freely assignable volun-

tarily (*ibid.*). Then the assignee became the owner of that *interest.* An interest in a beneficial estate is "a vested life estate in a fund"; it is "the legal unit of right"; it is not "the money received before or after a given moment". (*Per* Holmes, J., in *United States* v. *Fidelity Trust Co.,* 222 U. S. 158.) The money received goes to the owner of the interest or "legal unit of right" by virtue of that ownership. That ownership is a "property right belonging to "the beneficiary". (*Maguire* v. *Trefry,* 253 U. S. 12.) A bequest, like an assignment, is a transfer of an interest. As the New York Court of Appeals has expressed it, "a be- "quest of income to a legatee for life must be construed "to invest him *with a title* to such income *from the date of "the testator's demise".* (Italics ours. *Matter of Stanfield,* 135 N. Y. 292.)

Whether an equitable interest be deemed an "estate" or a complex chose in action (*Cf.* Stone, J., in *Senior* v. *Braden,* 295 U. S. 422) is not material here, since the chose in action is equally a present right *quasi* "property" and immediately assignable; but the holding of that case is that it is an estate, and the point was material to the decision of that case. That equitable choses in action are assignable will not be questioned. It is common legal knowledge that, as Dean Stone said at page 475 of the 17th Columbia Law Review:

> "Equitable rights have always been regarded by courts of equity as freely transferable and, so far as expedient, they have been likened to legal interests which could be created or transferred by the *cestui* in the same way as the legal owner could create or transfer rights from his legal ownership."

Then, regarding the present petitioner's position as *cestui* as the proprietorship of a complex chose in action, what he did was to pass the rights presently and irrevocably to his assignee. What passed was the presently existing assignable right or interest. What distinguishes *Lucas* v.

*Earl* (281 U. S. 111) is precisely the absence of any corresponding fact in that case. (See *Commissioner* v. *Field*, 42 Fed. [2d] at page 822, where this is pointed out as quoted *infra*. And see *infra*, pages 8 and 9.)

## III.

**The Court below has erred in holding the income concerned taxable to the assignor.**

The reason is, that not future income, but a present *interest*, or "legal unit of right", passed by the assignment, and the income goes to the assignee by virtue of that "property right belonging to the beneficiary" [assignee], who had become beneficiary *pro tanto* by virtue of the assignment. (Quotations from *United States* v. *Fidelity Trust Co., supra; Maguire* v. *Trefry, supra.*) Therefore the assignor had nothing to do with that income and so it can not be taxed to him. This the Circuit Court of Appeals for the Second Circuit squarely held in *Commissioner* v. *Field* (42 Fed. [2d] 820). There, in distinguishing the line of cases dealing with attempts to deflect income by anticipatory dealings with the income, which line of cases culminated in *Lucas* v. *Earl* (281 U. S. 111), Learned Hand, J., said for the court:

> "* * *. These were, however, all cases in which, though the instrument *affected* to convey an existing interest in property, there was none at the time which the law recognized. We do not understand that, where there are such, they may not be assigned like other property, *or that, when they have been, the income is still taxable to the assignor.*" (Italics ours.)

It is, indeed, hard to see how, where an assignable estate, interest, or right, which is in present existence as a "legal unit of right", is presently assigned, the income thereafter

accruing through it, and payable to its then owner, the assignee, can be taxed to the assignor. To do that would be to tax one man in respect of what is another's; and that, surely, even if the act assumed to do it, the Due-process Clause would not admit of.

## IV.

**The distinction is clear and broad between the present case and those cases including *Lucas* v. *Earl* where assignments of present effect in form have been held not to divert the accrual of taxable income because they were in effect mere anticipatory arrangements relating to future income.**

*Rosenwald* v. *Commissioner*, 33 Fed. [2d] 423 may be compared with the present case for effective illustration. In the *Rosenwald* case, the taxpayer had a present property in the shape of shares of stock. In the present case the taxpayer had a present property in the shape of a beneficial estate. In the *Rosenwald* case the taxpayer had prospective income in the shape of future dividends. In the present case the taxpayer had prospective income in the shape of future distributable trust income. In the *Rosenwald* case the taxpayer *did not assign any share*. In the present case the taxpayer *did assign part of his beneficial estate*. And that is the vital difference. The taxpayer in the *Rosenwald* case tried to pass the prospective income while retaining the present property, so that the assignee must receive the income when it came due under and through his assignor's retained right represented by the shares; the dividends had to be declared on the assignor's shares in order for the assignee's claim to the income to attach, and the right of the assignee to the dividends depended on their accruing upon the assignor's property. In the present case the taxpayer did not try to pass the prospective income while re-

taining the present property, but, on the contrary, parted with "a part of the interest of Edward Tyler Blair in "said trust estate", and thenceforth the assignee's right to the trust income depended on its accruing upon the assignee's property. And this illustrates the basic distinction underlying all the cases of attempts to dispose presently of income to fall due later.

This contrast makes it clear that the transaction in the present case was not an anticipatory arrangement at all, but a present deed. In *Lucas* v. *Earl, supra,* the importance of this is shown by the words of this court *per* Holmes, J. There husband and wife mutually agreed that future acquisitions of each including earnings should be the joint property of both, and it was held that the husband's earnings thereafter received should be taxed as wholly his income. The contract was binding but executory. The earnings must accrue by virtue of the husband's rights as employee in order for the right of the wife to attach. Thus in *Poe* v. *Seaborn* (282 U. S. 101) this court said at page 117, with reference to *Lucas* v. *Earl:*

> "The very assignment in that case was bottomed on the fact that the earnings would be the husband's property, else there would have been nothing on which it could operate."

And in *Lucas* v. *Earl,* at pages 114 and 115, this is said:

> "* * *. There is no doubt that the statute could tax salaries to those who earned them and provide that the tax could not be escaped by anticipatory arrangements and contracts however skillfully devised to prevent the salary when paid from vesting even for a second in the man who earned it. That seems to us the import of the statute before us and we think that no distinction can be taken according to the motives leading to the arrangement by which the fruits are attributed to a different tree from that on which they grew."

In the present case, there was no "anticipatory arrangement" touching income. A present right or interest was presently transferred. That right or interest was the tree on which the fruits in question grew. What we are insisting on is precisely that they be attributed to the tree on which they grew. The assignee received those fruits, thereby harvesting them from that tree, which already was his own.

Respectfully submitted,

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